

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  LTDS CORPORATION	DOCKET NO. TCU-01-13 (FCU-00-4)
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**ORDER GRANTING MOTION TO COMPEL  
WITH LIMITATIONS**

(Issued August 23, 2001)

On August 21, 2001, Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom), filed a motion to compel responses to four data requests submitted to LTDS Corporation (LTDS) on August 6, 2001. Iowa Telecom recited that counsel for the two parties consulted, but were unable to resolve the discovery dispute. LTDS objects to providing the information because it is proprietary and competitively sensitive. Iowa Telecom states it has offered to enter into a confidentiality agreement under customary terms and conditions. Iowa Telecom claims that confidentiality is not an adequate objection to production.

LTDS filed a resistance to the motion to compel on August 22, 2001. It claims that Iowa trade secret law would ordinarily protect such information from being known to Iowa Telecom. LTDS argues this would be true if the secrets were held either by LTDS or the Utilities Board (Board). LTDS states that a protective agreement under customary terms and conditions will not protect LTDS because the information will be available to an Iowa Telecom witness who is an integral employee in Iowa Telecom's

relationship with, and competition with, competitive local exchange carriers (CLECs). LTDS claims the only protection would be for the Board to view the information *in camera*. Finally, LTDS argues Iowa Telecom's data requests are beyond the scope of its involvement in the show cause proceeding. According to LTDS, Iowa Telecom's role should be that of a witness to LTDS's activities, not an investigator of LTDS.

Parties in contested case proceedings before the Board routinely share trade secrets under protective agreements. The information sought in the disputed data requests is clearly relevant to this proceeding, which turns on the efforts of LTDS to acquire and serve customers other than Internet service providers (ISPs). See Iowa Rule of Civil Procedure 122(a)<sup>1</sup>. In addition, LTDS's arguments about the limited role of Iowa Telecom and the suggestion that the Board view the information *in camera* fail to recognize the practice before the Board. The Board is not a party to the proceeding. The evidentiary record in this case will be made by the parties. Iowa Telecom's data requests are not beyond the scope of its role as a party in this proceeding.

However, the question presented in this discovery dispute is difficult because the information sought is particularly sensitive in the competitive relationship between these parties. Iowa Telecom's witness plays an integral role in that competition. Compounding the difficulty is the concern that, with the number of trade secrets in the

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<sup>1</sup> Iowa Rules of Civil Procedure are applicable to contested cases pursuant to Iowa Code § 17A.13.

utility industries, it will be difficult to provide due process in contested cases if secrets cannot be shared under protective agreements.

Based strictly upon the specific circumstances of this dispute, the Board will grant the motion to compel with a limitation. The information will be provided only to counsel for Iowa Telecom and will be held confidential by him. The information will not be shared with Iowa Telecom personnel. If Iowa Telecom chooses, it can retain an expert with no competitive relationship with LTDS to aid its counsel in the interpretation of the information. The expert will also hold the information confidential. The portions of the hearing related to the confidential information will be conducted in closed session. The portion of the transcript and any briefs relating to this information will not be available to the public. The Consumer Advocate Division of the Department of Justice (Consumer Advocate) may have access to the information if it executes a protective agreement.

Because the hearing in this matter will begin on August 28, 2001, the response time must be short. LTDS will be directed to deliver the required information to Iowa Telecom's counsel by noon on August 25, 2001. Counsel for Iowa Telecom and LTDS have been informally advised by telephone of the substance of this order to allow more time for LTDS to comply.

**IT IS THEREFORE ORDERED:**

1. The motion to compel responses to data requests filed by Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom, on August 21, 2001, is granted with the limitations discussed in the body of this order.

2. By noon on August 25, 2001, LTDS Corporation shall deliver to the office of Iowa Telecom's attorney the information sought in Data Requests 1, 2, 3, and 7 submitted on August 6, 2001.

3. Pursuant to Iowa Rule of Civil Procedure 134(a)(5), a copy of this order will be mailed to LTDS and copies will be mailed to the attorneys of record. In addition, Board attorneys have called the attorneys for the parties to informally state the substance of this order.

**UTILITIES BOARD**

/s/ Allan T. Thoms

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

Dated at Des Moines, Iowa, this 23<sup>rd</sup> day of August, 2001.